



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF THE CITY OF JENKINS, KY

These Comments are filed by the City of Jenkins, KY ("City") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Jenkins, KY is a rural city located in the mountains of Southeastern Kentucky with a population of 2,451. Our franchised cable provider is Mikrotec CATV, LLC. Our community has negotiated cable franchises since May 1967.

Our Current Franchise

Our current franchise began on October 13, 1997 and expires on October 12, 2112. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 3% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. However, pursuant to

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HB 272, as of January 1, 2006, the local cable franchising authorities in Kentucky no longer receive cable franchise fees. Instead, the Commonwealth of Kentucky imposes a 3% excise tax on multichannel video programming service. The tax is billed to subscribers and collected by providers. Additionally, the Commonwealth of Kentucky imposes a tax of 2.4% on gross revenues from multichannel video programming services and a tax of 1.3% on gross revenues from communication services. According to HB 272, local cable franchising authorities will be "held harmless" by the state for the amount of cable franchise fee revenue they have historically collected.

We require the cable operator to provide one channel for public, educational, and/or governmental ("PEG") access channels on the cable system. Our franchise requires that our PEG channels be supported in the following ways by the cable operator. The Cable provider shall, throughout the term of the franchise, provide at least one studio facility for public access. The studio facility shall be available not less than fifteen (15) hours per week. The Cable provider shall replace and repair its access studio facilities and equipment as necessary. The studio facility available for public access use shall be capable of live and taped program origination on the local public access channel. The cable provider shall make the facilities available on a first come, first served, nondiscriminatory basis to residents of the City or organizations which serve the franchise area. There shall be no charge to qualified users for up to five (5) hours per month of studio production time. Additionally, the cable provider shall maintain adequate staff and/or equipment to operate playback of access programming from the cable provider's facilities for the public access channel.

Our franchise also requires the cable provider shall provide a minimum of two portable video cameras, available full-time to access users, for the purpose of producing programming for the system's public access channel. Any persons using such equipment may be required to participate in training given by the cable provider and give a reasonable deposit to the cable provider for the use of such equipment. If persons request training, the cable provider shall provide such training free of charge. Additionally, the cable provider shall make available, full-time to public access users, offline editing facilities for the purpose of producing programming for the system's public access channels. Such editing equipment shall be configured so that the editing facilities can be available when the studio is in use.

Our franchise also requires the cable provider, at no cost to the City or the Jenkins Independent Schools Board of Education, to install and maintain a two-way feed from both the City Hall and Jenkins High School to the headend in order to provide the capability of receiving and originating programming from or into the PEG channel.

Our franchise contains the following requirements regarding emergency alerts: the cable operator shall incorporate into its cable television system, the capability which will permit the Mayor (or his/her designee) and the Letcher County Disaster and Emergency Services Director (or his/her designee), in times of emergency, to override, by remote control, the audio and video of all channels simultaneously. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: AMBER ALERT NOTIFICATION(MISSING

CHILDREN); ROAD CLOSING DUE TO MAJOR ACCIDENTS; VARIOUS OTHER EMERGENCIES.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. Section 26 of the cable franchise provides that the cable operator will maintain an office within the confines of the City of Jenkins at which subscribers may pay bills, report service or billing problems, request service or exchange equipment, and which shall be open during normal business hours and be conveniently located. The cable operator will provide a local telephone line which will be available to its subscribers twenty four (24) hours a day, seven (7) days a week. Trained representatives of the cable provider will be available to respond to customer telephone inquiries during normal business hours. Each such employee shall be trained to perform efficiently the various tasks, including responding to consumer inquiries and complaints, necessary to provide consumer services in a responsible and courteous manner. After normal business hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative of the cable provider within one (1) business day after receipt of the complaint. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions. Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

Each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

1. Installations will be performed within seven (7) days after an order has been placed.
2. The cable provider will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known. The Cable provider must begin actions to correct other service problems the next business day after notification of the service problem.
3. When a subscriber requests a change in the type of cable service he/she is currently receiving, the Cable provider must begin action to change the type of service provided the next business day after notification. If the desired change is not made within seven (7) days of notification, and the change would decrease the subscriber's bill, the Cable provider shall credit the subscriber's bill despite the fact that the service has not been changed.
4. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during normal business hours. (The Cable provider may schedule service calls and

other installation activities outside of normal business hours for the expressed convenience of the customer.)

5. The cable provider may not cancel an appointment with a customer after close of business on the business day prior to the scheduled appointment.

6. If a representative of the cable provider is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

Section 26 also provides that the cable provider shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (A) Products and services offered;
- (B) Prices and options for programming services and conditions of subscription to programming and other services;
- (C) Installation and service maintenance policies;
- (D) Instructions on how to use the Cable Service;
- (E) Channel positions of programming carried on the system;
- (F) Billing and complaint procedures, including the address and telephone number of the Government's cable officer;
- (G) A description of cable provider's policies concerning credits for outages and reception problems, consistent with these consumer protection standards; and
- (H) The local number for cable provider's subscriber service telephone system.

Section 26 also states that customers will be notified of any change in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable provider. In addition, the cable provider shall notify subscribers thirty (30) days in advance of any significant changes in other information required by the preceding paragraph.

Additionally Section 26 states that bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In cases of a billing dispute, the cable provider must respond to a written complaint from a subscriber within thirty (30) days. The cable provider shall not assess a late fee on subscribers' bills which are paid within forty (40) days.

According to Section 26 credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted. When the use of service or equipment furnished by the cable provider is interrupted due to any cause other than the negligence or willful act of the subscriber or the failure of equipment provided by the subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed, upon the request of

the subscriber, for the service and equipment rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of twelve (12) hours from the time it is reported to or detected by the cable provider. For purpose of this section, every month is considered to have thirty (30) days.

Our franchise original franchise contains the following reasonable build schedule for the cable operator: To provide cable service to all households of the City of Jenkins.

Our franchise requires that the cable operator currently provide service to every dwelling unit with the confines of the City of Jenkins.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: Within one year after the enactment of this the franchise ordinance, the cable operator shall be design and construct a 550 MHz system, which shall be spaced to 750MHz. The system has been rebuilt to 550 MHz, however, the residents of the City do not current receive cable modem services.

Our franchise contains the following insurance and bonding requirements: The cable provider shall procure and maintain for the duration of the franchise the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance hereunder by the cable provider:

(1) General Liability Insurance insuring Grantee in the minimum of:

1. \$500,000.00 for property damage per occurrence;
2. \$1,000,000. 00 for property damage aggregate;
3. \$1,000,000.00 for personal bodily injury or death to any one person; and
4. \$3,000,000.00 for bodily injury or death aggregate per single accident or occurrence.

(2) Comprehensive Automobile Liability Insurance insuring Grantee for owned, non-owned, or rented vehicles in the minimum amount of

- A. \$1,000,000.00 for bodily injury and consequent death per occurrence;
- B. \$1,000,000.00 for bodily injury and consequent death to any one person; and
- C. \$500,000.00 for property damage per occurrence.

Additionally our franchise requires a fifteen thousand dollar (\$15,000) letter of credit.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Section 10 states:

(a) For violation of any of the following provisions of this ordinance, penalties may be recoverable from the letter of credit as follows:

(1) For failure to complete construction and installation of the system, complete line extensions, or provide service in accordance with this Ordinance and the Grantee's application as incorporated herein, unless the City Council specifically approves the delay by resolution or because of reasons beyond the control of the Grantee, Grantee shall forfeit five hundred dollars (\$500.00) per day or part thereof that the violation continues.

(2) For failure to provide data and reports as requested by the Government and as required in Sections 9 and 37, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(3) For failure to comply with the operational standards following the City Council's resolution directing Grantee to make improvements pursuant to Section 25, Grantee shall forfeit two hundred dollars (\$200.00) per day or part thereof that the violation continues.

(4) For failure to test, analyze, and report on the performance of the system following the request of the Government pursuant to Sections 22 and 23, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(5) For failure to pay the franchise fee when due pursuant to Section 9, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

(6) For failure to comply within thirty (30) days of any City Council resolution directing compliance with any other provisions of this ordinance, Grantee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues.

Before the Government may assess any penalties under Section 10, the Government shall send via certified mail, written notice and an opportunity cure within fifteen days. Additionally, the franchise contains provisions for a public hearing before penalties can be assessed.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Please noted, that in addition to federal law, Section 163 of the Kentucky Constitution, requires that cable operators must obtain franchises to use city or county streets for any purpose. It is significant to note that the debates of the Constitutional Convention indicate that the purpose of Section 163 "was to prevent the Legislature from authorizing the indiscriminate use of the

streets of the city by public utilities without the city being able to control the decision as to what streets and what public ways were to be occupied by such utilities." Mt. Vernon Tel. Co. Inc. v. City of Mt. Vernon, 230 S.W.2d 451, 453 (Ky. Ct. App. 1950). In Ray v. City of Owensboro, 415 S.W. 2d 77, 79 (Ky. Ct. App. 1967), the court also stated that the "purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants."

In City of Owensboro v. Top Vision Cable Co. of Ky., 487 S.W.2d 283, 286-87 (Ky. Ct. App. 1972), where Top Vision Cable claimed that Owensboro lacked the authority to require that local CATV operations obtain franchises, the Court reiterated the interpretation of Section 163 that was set forth in Ray. The court also rejected Top Vision's argument that the city could not issue franchises because the "cables and wires will be placed on poles and strung over public ways where existing utility companies have the right to operate by other franchises." City of Owensboro, 487 S.W. 2d at 287. The court stated, "under its general obligation to provide its citizens with safe, clean and unobstructed public ways, the presence of television cables, even in connection with existing utilities, would be an added burden on the city." Id. Thus, the court concluded that the city had the right to require a franchise because the presence of television cables would be an additional responsibility.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service. However, we do have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the City of Jenkins. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Jenkins, KY therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

The City of Jenkins, KY



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